

TRULINCS 48860039 - FATA, FARID - Unit: WIL-A-B

FROM: 48860039
TO:
SUBJECT: JUDICIAL NOTICE TO THE COURT
DATE: 06/17/2021 07:30:59 AM

CASE No: 2:13-cr-20600

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA)
Plaintiff,)
v.) Hon. Paul D. Borman
FARID FATA)
Defendant.)

JUDICIAL NOTICE TO THE COURT

Defendant Farid Fata ("Fata") respectfully submits this Judicial Notice to notify the Court of the following new developments and medical records related to his Renewed Motion for Compassionate Release under 3582(C)(1)(A).

I - FATA RECEIVED THE FIRST DOSE OF THE PFIZER COVID-19 VACCINE AFTER FILING GRIEVANCE:

On June 2, 2021, Fata has filed a Grievance pursuant to the BOP Program Statement 1330.13, "Administrative Remedy Program" outlines Fata's complaint that on May 25, 2021, more than 140 inmates at FCI Williamsburg received the COVID-19 vaccine while Fata was excluded from the vaccine inmate callout list to be inoculated under the pretext that the vaccine was not available to Fata on that day. Fata's "Administrative Remedy" case outlines Fata's specific efforts to resolve the Grievance and his most recent communications with the medical and nursing staff at FCI Williamsburg and the response of AHSA Mrs. D. Brown to Fata's Administrative Remedy case on June 9, 2021 (Exhibit A). On June 16, 2021, Fata received the first dose of the Pfizer COVID-19 vaccine. Despite pre-medication with acetaminophen (Tylenol), Fata experienced generalized muscle and joint pain with profuse diarrhea which required to take off work in Unicor on June 16, 2021 and June 17, 2021.

II - NEW COVID-19 INFECTIONS ERUPTED IN FATA's HOUSING UNIT ON JUNE 16, 2021:

"NEW OUTBREAK OF COVID-19" in Fata's housing unit was announced on June 16, 2021 by case manager E. Brown in an "Emergency Town Hall meeting" after the 4:00 pm count where at least one inmate, tested positive for COVID-19, and was placed in "isolation". Fata has sent an email to the warden asking again to enforce the CDC COVID-19 tracing guidelines and test all inmates in the Unicor Unit where Fata is housed to mitigate the spread of the virus (Exhibit B).

III - FATA's MEDICAL CARE CANNOT BE MET IN BOP CUSTODY:

Fata's medical care underwent significant deficiencies and delays in performing the neurology and gastroenterology

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work-up and testing since it was ordered by the Bureau provider on March 25, 2021 (Government's Suppl. Brief, DE # 322, Exhibit 2, sealed, pages 9 and 10):

(a) On page 9, the provider notes: "Neurology: Reason for request, NCS (Nerve Conduction Studies). Reports nerve type pain in both feet. Monofilament exam confirms some deficit in sensation".

As of the date of this Judicial Notice, the NCS was not performed since March 25, 2021 which is a pre-requisite needed for the approval of Gabapentin as primary treatment for Fata's refractory diabetic neuropathy. Fata is told that it may take up to 12 months for the overall approval process of Gabapentin treatment, if Region approves it. Meanwhile, Fata's neuropathy is left untreated since December 2020 after failing two-line therapy of Duloxetine and oxacarbazepine, leaving Fata with excruciating burning pain in both feet. The irony is that the Bureau providers have treated Fata's diabetic neuropathy with Duloxetine and Oxacarbazepine that are not FDA approved in this disease where the government claims that "the Bureau of Prisons demonstrates its ability to manage his care competently".

(b) On page 10, the provider notes: "Head CT. Indication headaches. 55 yr old male w/ 3 month hx of daily headaches. Headaches began during COVID-19 infection. Continued afterwards but moved to different location of head".

As of the date of this Judicial Notice, and since March 25, 2021, the head CT Scan was not performed as standard work-up initiated by the Bureau provider for Fata's migratory headaches.

(c) On page 10, the provider notes: " Gastroenterology, NOS. Inmate desires consideration for EGD. Reports that he continues to have reflux symptoms despite use of OTC med. Previous EGD WNL".

See consultation Request on 3-26-2021 (Exhibit C) that shows the presence of "peri-apical abscess" defined as a collection of pus found on colonoscopy.

Fata was recently notified that the central office denied the provider's request for EGD.

Moreover, Fata's immunocompromised status secondary to neutropenia and diabetes, manifested with overlapping COVID-19 and skin infection as noted in Dr. Jack Goldberg's opinion to the Court on May 12, 2021:

"In my opinion within a reasonable degree of medical certainty, Farid Fata has neutropenia and diabetes which increases his risk for infection and bring into question his ability to sustain an effective immune response to infection and immunization. Thus, Farid Fata remains at high risk for breakthrough COVID and recurrent skin infections. I support Farid Fata's notice to the Court with his concern for infectious disease risk in his current housing unit".

Fata and Dr. Jack Goldberg, M.D. have provided the Court with published, peer-reviewed medical data that shows within reasonable degree of medical certainty that recurrent infections in individuals who have neutropenia and experienced viral (COVID-19) and bacterial infections (skin, and peri-apical abscess on colonoscopy) as in Fata's case, are signs that can lead to sepsis (systemic multiple organ infections called "Systemic Inflammatory Syndrome" that cause severe illness with a reported mortality > 36% (Exhibit D). See United States v. Browning, 2021 U.S. Dist. LEXIS 38058. Case No. 19-20203-2 (E.D. Mich. March 2, 2021)(the Court found that Defendant remains at high risk or serious illness from COVID-19 even though the number of cases at his prison has decreased over the past several weeks and

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vaccinations have begun. The Court concludes that defendant's overlapping medical conditions constitute extraordinary and compelling reasons for release. Defendant served only 20% of his sentence).

The Government claims that "the Bureau of Prisons demonstrates its ability to manage Fata's care competently until Fata is vaccinated and through the remainder of his prison term" (DE # 305, Page ID # 4583). For the government to even suggest that Fata's medical care is well served in BOP custody is cruel aimed to mislead the Court. Numerous courts have reached the same conclusion of BOP's abysmal health care. *United States v. Beck*, No. 1:13-cr-186-6, 2019 WL 2716505 (M.D.N.C. June 28, 2019) ("Ms. Beck's invasive cancer and the abysmal health care BOP has provided as 'extraordinary and compelling reasons' warranting a reduction in her sentence to time served). Certainly, this applies to FCI Williamsburg where Fata was offered for the first time on April 27, 2021, the COVID-19 vaccine to be inoculated in the presence of concurrent active skin infection which stands in defiance with the CDC guidelines (Exhibit E).

Moreover, health services providers acknowledged the "increased cases of Staph infections" in their clinical notes or encounters (DE # 322, Government's Exhibit 1, sealed, page 5) as the MRSA outbreak continues to affect more inmates at FCI Williamsburg (Exhibit F).

IV - NEW SIXTH AND SEVENTH CIRCUITS HOLDINGS OF COMPASSIONATE RELEASE RELATED TO FATA's CASE:

Fata is notifying the Court of a recent Sixth Circuit holding concordant with Fata's exemplary rehabilitation and remarkable post-sentencing conduct with no disciplinary infraction (Exhibit G) and no criminal history whatsoever (Fata's Brief DE # 302, and Suppl. Brief DE # 307), that the Government ignored (Govt. Brief DE # 305, Page ID # 4583, and Suppl. Brief DE # 310, Page ID # 4762). The Sixth Circuit overturned a denial of a Compassionate Release in *United States v. Owens*. Case No. 20-2139, (6th Cir. May 2021), and held that the District Court did not consider Owens' remarkable rehabilitation or any other bases for a finding of extraordinary and compelling reasons for Compassionate Release. In 2004, Owens was convicted on a range of violent crimes that do not apply to Fata's case, of five 924(c) counts, one 2119 (carjacking) count, four 2113 (bank robbery) counts, and one 922(g) count and was sentenced to 1260 months on the 924(c) counts and 151 months on the remaining convictions, but he has served only 15% of his sentence if released.

On the other hand, the Seventh Circuit vacated the denial of Compassionate Release in *United States v. Black*, No. 20-2314, (7th Cir. June 4, 2021), where Black is serving a 40-year sentence for firearm, robbery, and Federal drug offenses that he committed as a Chicago police officer. The Seventh vacated the District Court's decision based on two features. First, "in light of the First Step Act of 2018, the Sentencing Commission's Policy Statements no longer govern the District Court's "extraordinary and compelling reasons" "in light of Black's health account of prostate cancer and the COVID-19 pandemic in the era of COVID-19 vaccination. Second, "the District Court needs to take a fresh look at how the 3553(a) factors apply to Black even as Black had served only one third of his lengthy sentence for such serious crimes".

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V. CDC REPORTS SIGNIFICANT RISE IN COVID-19 VACCINE BREAKTHROUGH INFECTIONS WITH HOSPITALIZATIONS AND DEATH:

In his Judicial Notice to the Court dated May 25, 2021, Fata notified the Court that the CDC "National COVID-19 Breakthrough REDCap Database" identified 1359 "hospitalized" and "fatal" COVID vaccine breakthrough cases and reported a 16% mortality in those patients (Exhibit H) as of May 10, 2021.

On June 7, 2021, the CDC reported that "as of June 7, 2021, 3,459 patients with COVID-19 vaccine breakthrough infection were hospitalized or died". The cause of death was related to the virus or other causes.(Exhibit I). i.e. Over one month period, this accounts for an increase by more than 2000 patients who were hospitalized or died. United States v. Elias, 984 F.3d at 521, (6th Cir. 2021)([r]elying on official guidelines from the CDC is a common practice in assessing compassionate release motions); See also United States v. Sweet, 2021 U.S. Dist. LEXIS 69177, (E.D. Mich. Apr. 2021) (the Court found that in Michigan alone, 246 fully vaccinated persons contracted COVID-19 between January 2021 and March 2021).

VI - CONCLUSIONS:

Even if Fata received the first dose of the COVID-19 vaccine in prison, in and of itself does not prevent compassionate release. There is no safe haven for Fata in prison except for his release from prison to his release residence as he remains at a non-speculative risk to develop COVID-19 vaccine breakthrough infection based on the "CDC REDCap database", and develop recurrent bacterial infections, because of his immunocompromised status.

Fata's overlapping medical conditions and threat of serious illness and death from COVID-19 and recurrent bacterial infections as he faces unsafe conditions at FCI Williamsburg (DE # 324) constitute extraordinary and compelling reasons for release. Thus, as this Court has full discretion to define "extraordinary and compelling reasons for Compassionate Release", Fata asks this Court to evaluate the totality of Fata's circumstances as they are today and release Fata from prison to a safe environment at his release residence.

Respectfully Submitted,

Farid Fata
48860-039
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

 June 17, 2021

Case No. 2:13-cr-20600

Dear Clerk of the Court,

I am submitting the enclosed "JUDICIAL NOTICE" with respect to my Renewed Motion for Compassionate Release (DE #302) in light of the new developments and new medical records related to my health problems.

I have asked the Court to grant my Motion to seal the enclosed exhibits as they contain sensitive medical and personal information.

I appreciate your consideration to docket the enclosed documents. Thank you so much.

Respectfully Submitted,

Fairid Fataz

June 16, 2021

#48860-039

FCI Williamsburg

P.O. Box 340

Salters, SC 29590

RECEIVED

JUN 23 2021

PAUL D. BORMAN
U.S. DISTRICT JUDGE

P.S. This package is sent via U.S.P.S. certified Mail. Tracking No:

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